



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

08/776,321 04/15/97 WUBBEN M 29865

000116 IM62/0806
FEARNE GORDON MCCOY & GRANGER LLP
SUITE 1200
526 SUPERIOR AVENUE EAST
CLEVELAND OH 44114-1484

EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

21

DATE MAILED:

08/06/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
08/776,321

Applicant(s)

Wubben et al

Examiner

Curtis E. Sherrer

Group Art Unit

1761**THE PERIOD FOR RESPONSE:** [check only a) or b)]

- a) ☒ expires 5 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Aug 4, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
 - ☒ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☒ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See attached.

☒ Applicant's response has overcome the following rejection(s):

See attached.

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):
- Claims allowed: None
- Claims objected to: None
- Claims rejected: 18, 20-29, 31, 36, 37, 39, 40, and 43-49

- ☒ The proposed drawing correction filed on Aug 4, 1999 ☐ has ☒ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s).

- ☐ Other

**CURTIS E. SHERRER
PATENT EXAMINER
ART UNIT 1761**

ADVISORY ACTION

Response to After Final Amendment

1. Applicants' arguments of 08/04/99 have been reviewed but not found to be persuasive. Specifically, Applicants first assert that Wijsman declaration provides unexpected evidence that overcomes the art rejections. It is first noted that the product claims are considered to be anticipated by the prior art and therefore any showing of unexpected results would be unpersuasive with regard to those claims.
2. With regards to the process claims, which are rejected under 35 USC 103(a) as being obvious, the declaration is not considered persuasive because the data only shows results for using 10 gm of pectin per hectoliter rather than the full range of 0.5 to 30.
3. Further, the declaration does not give the specifics of the testing procedure. For example, it does not disclose how or what parts of the tested material were used or the specifics of how the material was extracted. It is noted that the instant specification shows that the foam stability is dependent on which part of the hop plant and which hop plant is used (see Figure 1). For example, it is shown that the Northern Brewer cone pectin actually decreased the beers stability. (The specification states that it may be due to the high polyphenol content). Therefore, it is unclear if unexpected results is obtained by all parts and all amounts of the hop plant pectin.
4. With respect to the new drawings, it is unclear what they represent. It is noted that there is no Brief Description of the Drawings found in the specification.

5. While the amending of the ranges to overcome their indefiniteness, because the phrase "measurably improved" (Claim 36) is considered to be indefinite and possibly represents new matter (its basis in the specification could not be found). Therefore, the instant amendments to the claims have not been entered and therefore, the 35 U.S.C. § 112 ¶ 2 remains.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

8. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read "Curtis E. Sherrer", with a long horizontal flourish extending to the right.

Curtis E. Sherrer
August 5, 1999